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IN THE

Supreme Court of the United States

October Term, 1962.

No. 314.

JAMES R. HOFFA and ROBERT E. McCARTHY, JR.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' REPLY BRIEF.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

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UNITED STATES OF AMERICA,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

1. The Government's Brief in Opposition masterfully avoids the real issue presented by this case. Petitioners contended that high Government officials of the Executive and Legislative Branches had deliberately engaged in a campaign to villify the principal defendant in a criminal case about to be submitted to a Grand Jury. In support of that contention, on motion to dismiss the subsequent indictment, petitioners subpoenaed certain of the officials most directly and prominently involved. The Government successfully suppressed the evidence by motions to quash the subpoenas. Thus the fundamental issue is whether this suppression of evidence is reviewable.

Reading the Government's Brief in Opposition, no one would find even a trace of the extraordinary fact that the Government has been and still is trying to prevent disclosure in court of the campaign of villification that was carried on from Washington, D. C. Indeed, the Government argues that petitioners' claim is no different from any civil litigant's pre-trial motion for discovery (Br. in Opp., p. 5). Perhaps counsel for the Government can see no difference between, for example, a motion under Fed. R. Civ. P. 34 to discover documents in an ordinary contract dispute and the suppression of evidence to prove that Government officials wilfully attempted to deprive defendants of their right to a fair and impartial Grand Jury, as guaranteed by the Constitution of the United States. That a distinction exists, we submit, is rather obvious.

The Government managed to convince the District Court that whether or not Cabinet officers and Senators and others had endeavored to deprive petitioners of a fair and impartial Grand Jury was irrelevant. Supposedly, it would be relevant if a defendant were to charge that Government officials had bribed Grand Jurors with money. But, according to the Government, it is immaterial if those officials merely poisoned the jurors' minds with propaganda.[1] Petitioners—so far in vain—disagree.

2. The Government to the contrary notwithstanding, the extraordinary issue thus presented was not decided by this Court in *DiBella v. United States*, 369 U. S. 121 (1962). The Brief in Opposition totally fails to meet the fact that defendants' motions to suppress evidence illegally seized, the problem dealt with in *DiBella*, concerned evidence relevant to defendants' guilt or innocence. Such evidence would be proffered by the Government at the trial. All this Court held in *DiBella* is that the determination of the admissibility of such evidence is more properly made at the

1. Surely the constitutional provision requiring an indictment presupposes a valid indictment, not one totally void.

trial rather than in a pretrial proceeding. On the other hand, in this case, the evidence which the Government has suppressed will not be an issue in the trial. That high Government officials deliberately attempted to influence the Grand Jury is, clearly enough, not relevant to petitioners' guilt or innocence. As far as proceedings in the District Court are concerned, therefore, the question presented by the appeal to the Court of Appeals has been finally adjudicated.

The issue thus presented is whether this final order of the District Court can be reviewed immediately. The Government argues that petitioners will receive full and effective review after judgment of conviction. The Government does not deny that the forthcoming trial will be an extremely protracted one, as indicated in the Petition for Certiorari. If a conviction should result, petitioners obviously will be sorely handicapped in litigating this issue. They would be forced to ask an appellate court to reverse the judgment on an issue entirely collateral to the question of guilt or innocence. Moreover, they would be embarrassed further by the fact that their claim on this collateral issue would be that they had been denied the means of proof. Even with the serious allegations of misconduct presented here, it is manifest that full and effective review would not be available in such a post-conviction proceeding. What the Government really means is that this diluted and diminished appellate review is all that they believe petitioners should receive. No one could seriously contend that a post-conviction appeal on this issue would not be substantially less full and less effective than the present appeal. The difference, it is submitted, is so great that petitioners' rights can be vindicated, as a practical matter, only through the present appeal.

Accordingly, petitioners contend that their appeal fits within the principles of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949); *Swift & Co. v. Compania Caribe*, 339 U. S. 684 (1950); and *Stack v. Boyle*, 342 U. S.

1 (1951). See also *United States v. Guterma*, 272 F. 2d 344 (2d Cir. 1959); *Edwin Raphael Co. v. Maharam Fabrics Corp.*, 283 F. 2d 310 (7th Cir. 1960).

Respectfully submitted,

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